IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1116 of 2004

in

SPECIAL CIVIL APPLICTION No 6857 of 2002

with

LETTERS PATENT APPEAL No 1919 of 2004

with

CIVIL APPLICATION No 8442 of 2004

in

SPECIAL CIVIL APPLICATION No 6864 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PRAKASH JAYANTILAL PATEL

Appearance:

1. LETTERS PATENT APPEAL No. 1116 of 2004

MR HD DAVE AGP for Appellant No.

MR BA VAISHNAV for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA

and

HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 28/12/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Both these appeals are disposed of by this common judgment as common question is involved in both these appeals.

#. The appellants-State of Gujarat and others have challenged in Letters Patent Appeal No.1116/04 the judgment and order dated 16.10.2002 passed by the learned Single Judge of this court in Special Civil Application No.6857/02 filed by respondent-original petitioner-Prakash Jayantilal Patel whereby the learned Single Judge allowed the writ petition and directed the appellants-original respondents to allow the petitioner to appear at the pre-service examination at fourth attempt and also directed them to continue the respondent-original petitioner in service till the results of fourth attempt of the pre-service examinations were declared.

#. Civil Application No.223/04 filed in Letters Patent Appeal No.1116/04 seeking interim relief against the judgment and order dated 16.10.2002 passed by the learned Single Judge in special Civil Application No.6857/02 was disposed of by the Hon'ble First Court on 20.7.2004 after hearing learned counsel for the parties it was directed that the original petitioner may be extended fourth chance to appear in the examination as and when the same takes place as directed by the learned Single Judge. It was also ordered that the order of termination may not be passed till otherwise directed by the court.

#. Letters Patent Appeal No.1919/04 is filed by the

appellants-State of Gujarat and others against the judgment and order dated 16.10.2002 passed by the learned Single Judge in Special Civil Application No.6864/02 filed by the respondent-original petitioner-Rajnikant Ambalal Patel whereby the learned Single Judge directed the original respondents-present appellants to permit the original petitioner to appear at the pre-service examination at the fourth attempt and also directed them to permit the petitioner to continue in service till the result of pre-service examination were declared at which the petitioner appears at the fourth attempt.

#. Civil Application No.8442/04 was filed in Letters Patent Appeal No.1919/04 seeking interim relief against the judgment and order passed by the learned Single Judge allowing writ petition filed by the respondent-original petitioner. However, Division Bench of this court (Coram : A.R.Dave & K.A.Puj, JJ.) on 15.10.2004 issued rule making it returnable on 26th October, 2004 and no other interim order was passed.

#. It is stated at the Bar by learned counsel Mr.Vaishnav appearing for the respondents-original petitioners in both the appeals that in pursuance of the orders dated 16.10.2002 passed by M.S.Shah, J. in both the Special Civil Application Nos.6857/02 and 6864/02, both the original petitioners are in service till today. He further states that though the Hon'ble First Court passed order dated 20.7.2004 in Civil Application No.223/04 in Letters Patent Appeal No.116/04, the present appellants have so far not extended fourth chance to the respondent-original petitioner-Prakash Jayantilal Patel in the examination. Similarly, petitioner-Rajnikant Ambalal Patel of Special Civil Application No.6864/02 is also not extended fourth chance to appear in the examination, as ordered by this court on 16.10.2002 in the said petition.

#. Learned AGP, Mr.Dave appearing for the appellants in both the appeals vehemently submitted that the learned Single Judge committed grave error in allowing both the writ petitions by his even order dated 16.10.2002. He submitted that rules are very clear. Under the rules, if the employee does not pass the examination in three attempts, then his/her services are required to be terminated. He submitted that admittedly both the respondents-original petitioners have not cleared their examination in three attempts, therefore, their services were sought to be terminated and no fault can be found with the same. He, therefore, submitted that the learned Single Judge, without considering the statutory rules,

allowed both the writ petitions filed by the respondents-original petitioner dehors the rules, therefore, the judgment and order passed by the learned Single Judge be quashed and set aside.

#. However, learned counsel Mr.Vaishnav appearing for respondents-original petitioners in both the appeals submitted that State of Gujarat had taken the stand in Special Civil Application No.5365/01 that on failure to pass examination in three attempts, an employee to be given one more chance after terminating his service. If fourth chance has been given to an employee after termination, then we fail to appreciate that why the present respondents-original petitioners should not be given that opportunity. In the instant cases, both the respondents-original petitioners were appointed on compassionate ground and since 1998 they are in service.

#. Under the circumstances, when the learned Single Judge of this court has exercised his discretionary writ jurisdiction in favour of the respondents-original petitioners and directed the original respondents-present appellants to appear at the pre-service examination at the fourth attempt by continuing their service till the results of the said examinations were declared, then certainly this court would not like to interfere with such discretionary orders in its letters patent jurisdiction, more particularly, when the learned Single Judge himself has made it clear that if the petitioners do not appear at the said examination at the fourth attempt then the respondents would be at liberty to terminate their services even without waiting for the result of the said examination.

##. As stated earlier, after the judgment and order passed by the learned Single Judge on 16.10.2002, so far the appellants have not taken the said examination though both the respondents-original petitioners have already applied for the same.

##. In view of the above discussion, both the appeals fail and are hereby dismissed. However, there shall be no order as to costs.

##. Civil Application No.8442/04 is dismissed as main Letters Patent Appeal No.1919/04 is dismissed. Rule issued on civil application stands discharged with no order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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